



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

SENTRIX PHARMACY

Respondent Name

AMERICAN ZURICH INSURANCE CO

MFDR Tracking Number

M4-16-3266-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

June 24, 2016

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The insurance carrier, Zurich, failed to take final action on the claim within the 45 day period set forth in TAC §133.240...Sentry Pharmacy and Discount, LLC respectfully requests for the Texas Department of Insurance to issue an order awarding the requestor with the full reimbursement amount for the services involved in this dispute. "

Amount in Dispute: \$2,289.71

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The medication ay issue required preauthorization. Compound medications of the type provided in this case considered "investigational or experimental."

Response Submitted by: Flahive Ogden & Latson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
March 16, 2016	Pharmacy services – Compound 240 Grams	\$2,289.71	\$2,289.71

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.240 sets out the procedure for medical bill processing by the workers' compensation insurance carrier.
3. 28 Texas Administrative Code §134.503 sets out the fee guideline for pharmacy services.
4. No explanation of benefits were found in the submitted documentation.

Issues

1. Did American Zurich Insurance Company reduce or deny the disputed services not later than the 45th day after receiving the medical bill?
2. Is the requestor entitled to additional reimbursement?

Findings

This medical fee dispute was filed by health care provider Sentrix Pharmacy on June 24, 2016. Sentrix Pharmacy (Sentrix) on its table of disputed services asserts that it was not paid by American Zurich Insurance Company (Zurich) for the compound it dispensed to a covered injured employee on March 16, 2016.

1. Sentrix contends that Zurich failed to “take final action on the claim within the 45 day period set forth in in TAC §133.240.” Furthermore, in its reconsideration request, Sentrix also alleges that “Sentrix has not...received any sort of notification or EOBR.”

According to Texas Labor Code Sec. 408.027 (b), Zurich was required to pay, reduce or deny the disputed services not later than the 45th day after it received the medical bill from Sentrix. Corresponding 28 Texas Administrative Code §133.240 (a) also required Zurich to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45th day. Final action is defined as:

Rule §133.2 (6) Final Action on a medical bill –

- (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
- (B) denying a charge on the medical bill.

The following evidence supports Sentrix’s written statement that the medical bill for the service in dispute was initially received by Zurich on March 28th, 2016.

- A copy of a certified mail receipt dated March 17th, 2016 numbered 9414 8118 9956 3117 0127 05 addressed to Zurich.
- A copy of a corresponding USPS tracking printout indicating that Zurich received certified mail number 9414 8118 9956 3117 0127 05 on Monday March 28th, 2016 at the location listed on the certified mail receipt.

Although there is evidence to support that Zurich received a medical bill for the service in dispute on March 28th, 2016, Zurich failed to timely take the following actions:

Rule §133.240 (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45th day** [emphasis added] after the insurance carrier received a complete medical bill.

Rule §133.240 (e) The insurance carrier **shall send the explanation of benefits** in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:

- (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

Zurich’s failure to timely issue an explanation of benefits to Sentrix Pharmacy creates a waiver of defenses that Zurich raised in its response to medical fee dispute resolution under Rule §133.307 (d)(2)(F):

28 Texas Administrative Code §133.307 (d)(2)(F) The [carrier’s] response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review.

The division notes that Flahive Ogden & Latson's (FOL) response to medical fee dispute resolution on behalf of Zurich includes a statement that "the carrier asserts that it has paid according to applicable fee guidelines and challenges whether the disputed charges are consistent with the applicable fee guidelines."

The division notes that contrary to FOL's conclusory statement:

- no evidence was presented by FOL to the division to support that Zurich took final action by paying reducing or denying the services in dispute within 45 days; and
- no evidence was presented to the division to support that Zurich timely presented **any** defenses to Sentrix on an explanation of benefits as required under Rule §133.240.

All workers compensation insurance carriers are expected to fulfill their duty to take final action as required by the divisions Laws and adopted administrative rules. Zurich failed to do so in this case.

The division concludes that Zurich's failure to timely issue an appropriate explanation of benefits creates a waiver of any new defenses presented by Zurich's to the division at medical fee dispute.

2. Rule at 28 Texas Administrative Code §134.503 applies to the compound in dispute and states, in pertinent part:

- (a) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
- (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
 - (A) Generic drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (B) Brand name drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
 - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
 - (A) health care provider; or
 - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502 (d)(2).

Each ingredient is listed below with its corresponding reimbursement amount as applicable.

Ingredient	NDC & Type	Price Gm	Total Gm	AWP Formula §134.503(a)(1)	Billed Amount §134.503(a)(2)	Lesser of (a)(1) and (a)(2)
Amantadine	38779041109 Generic	\$24.23	19.2	$(\$24.225 \times 19.2) \times 1.25 = \581.52	\$465.12	\$465.12
Amitriptyline	38779018908 Generic	\$18.24	4.8	$(\$18.240 \times 4.8) \times 1.25 = \109.44	\$87.55	\$87.55
Baclofen	38779038808 Generic	\$35.63	9.6	$(\$35.630 \times 9.6) \times 1.25 = \427.56	\$342.04	\$342.04
Gabapentin	38779246108 Generic	\$59.85	12.0	$(\$59.850 \times 12.0) \times 1.25 = \897.75	\$718.20	\$718.20
Ketoprofen	38779007805 Generic	\$10.45	24.0	$(\$10.45 \times 24.0) \times 1.25 = \313.5	\$250.80	\$250.80

